

**REASONABLE ACCOMMODATION
RESOURCE GUIDE**

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REASONABLE ACCOMMODATIONS

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REASONABLE ACCOMMODATIONS

General Notes

Provision of Reasonable Accommodations do not necessarily replace or negate requirements under Section 504 regulations.

Section 504 prohibits discrimination on the basis of disability in any program, service or activity that receives federal financial assistance. This means, for example, that persons with disabilities may not be denied the opportunity to participate in a program, services or activity; may not be required to accept a different kind or lesser program or service than what is provided to others, and may not impose application or qualification criteria, rental fees or sales prices, and rental or sales terms or conditions that are different than those required of or provided to persons who are not disabled. Housing providers may not require persons with disabilities to live only on certain floors, or to all live in one section of the housing. Housing providers may not refuse to make repairs, and may not limit or deny someone with a disability access to recreational and other public and common use facilities, parking privileges, cleaning or janitorial services, or any services which are made available to other residents. People with disabilities may not be denied the opportunity to serve on planning or advisory boards because of their disabilities.

Section 504 limits housing providers from providing, or requiring persons with disabilities to accept, housing that is different or separate, and instead, requires that housing programs be integrated and offer the same benefits as provided to persons without disabilities. In other words, accessible units in a single elevator building should be located throughout the building and not just on the first floor. In housing developments having multiple buildings, accessible units also should be interspersed throughout these buildings, rather than in just one or two buildings. For example, in housing serving elders and persons with disabilities, persons with mental disabilities or any other disabilities, may not be segregated on any one wing, floor, or in one building.

How can a provider ensure that its existing housing or programs meets Section 504?

- To the maximum extent feasible, distribute accessible units throughout housing developments and sites, and make them available in a sufficient range of sizes and amenities so as not to limit choice.
- Adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities. Housing providers must also take reasonable non-discriminatory steps to maximize use of such units by eligible individuals.
- When an accessible unit becomes vacant, before offering the unit to an individual without a disability, offer the unit: first, to a current occupant of the housing development requiring the unit's accessibility features; and second, to

an eligible qualified applicant on the waiting list requiring the accessibility features.

- When an applicant or tenant requires an accessibility feature or policy modification to accommodate a disability, a federally assisted housing provider must provide the feature or policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden.

Responding to and providing reasonable accommodations does not relieve the PHA of its responsibility to provide fully accessible UFAS compliant units or meet the other regulatory requirements of the guidance outlined under Section 504 regulations at 24 CFR Part 8. Provision of reasonable accommodations is merely one component of the Section 504 regulations.

Since persons with disabilities may have special needs due to their disabilities, in some cases, simply treating them exactly the same as others may not ensure that they have an equal opportunity to use and enjoy a dwelling unit or housing program.

When a family member requires an accessible feature(s) or policy modification to accommodate a disability, PHAs must provide such feature(s) or policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden. If providing such feature(s) would result in a financial and administrative burden, the PHA is required to take any other action that would not result in an undue burden. PHAs and other recipients of Federal financial assistance are required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the unit, the common areas of a dwelling or participate in or access other activities conducted/sponsored by the recipient.

Disability: Any person who has a physical or mental impairment that substantially limits one or more major life activities. The term “physical or mental impairment” may include, but is not limited to, conditions such as visual or hearing impairment, mobility impairments, HIV infection, mental retardation, drug addiction (except current illegal use of or addiction to drugs), or mental illness. The term “major life activity” may include seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking or working. Section 504 also protects persons who have record of such impairment, or are regarded as having such an impairment.

There must be an identified relationship between the requested accommodation and the individual’s disability.

Is It Reasonable: Whether a particular accommodation is “reasonable” depends on a variety of factors and must be decided on a case-by-case basis. The determination of whether a request is reasonable depends on the answers to two questions.

1. Does the request impose an undue financial and administrative burden on the housing provider?

2. Would making the accommodation require a fundamental alteration in the nature of the provider's operations?

If the answer to either question is yes, the requested accommodation is not reasonable. However, even where a housing provider is not obligated to provide a particular accommodation because the particular accommodation is not reasonable, the provider is still obligated to provide other requested accommodations that do qualify as reasonable.

Costs: Section 504 requires that in making an accommodation, a federally assisted housing provider will be required to bear costs which do not amount to an undue financial and administrative burden.

Requests for accommodations: Requests may be made at any time. Section 504 does not prescribe a uniform procedure for requesting a reasonable accommodation to be used with all housing providers. To request an accommodation, an individual need not mention Section 504 or use the phrase "reasonable accommodation." Although the Section 504 regulations do not require it, it is usually helpful that the request be made in writing. Requests may be made of any HA staff and all should be trained to receive and report all such requests.

Section 504 does not require that a housing provider adopt a formal procedure that an applicant for housing or a tenant must follow to request a reasonable accommodation. However, having such a procedure will probably aid both the individual in making the request and the housing provider in assessing it and responding to it in a timely fashion.

Failure to Respond: If a housing provider delays responding to a request for an accommodation, after a reasonable amount of time, that delay may be construed as a failure to provide a reasonable accommodation. A tenant or applicant may choose to seek legal assistance or file a complaint with HUD. Tenants may also choose to contact the local HUD Office of Public Housing or Office of Fair Housing and Equal Opportunity to request assistance in resolving the request if appropriate.

PHA Responds with Alternative: If the housing provider believes that the requested accommodation is unreasonable, the housing provider may, but is not required to, propose a substitute accommodation. In doing so, the housing provider should give primary consideration to the accommodation requested by the tenant or applicant because the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective. If the housing provider suggests an alternative accommodation, the tenant may reject it if s/he feels it does not meet his or her needs. (Please refer to HUD/DOJ Joint Statement issued May 17, 2004 which requires this to be an interactive process.)

What You Can and Cannot Ask: It is unlawful for a housing provider to

- 1) Ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability,

- 2) Ask about the nature or severity of a disability of such persons,
- 3) Ask if an applicant is capable of independent living.

Housing providers may make the following inquiries, provided these inquiries are made of all applicants, regardless of whether the applicant appears to have a disability or says he or she has a disability.

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal drug abuser or addicted to a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability.
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability. This means that a PHA may ask applicants if they need units with accessible features.

Verification: Housing Authorities are required to verify that an applicant qualifies as a person with a disability before permitting them to move to housing designated for persons with disabilities, or granting the \$400 rent deduction, disability expense allowance, or deduction for unreimbursed medical expenses. Applicants and residents cannot be compelled to reveal the fact that they have a disability, however, if they do not, they may not necessarily receive any of the benefits that such status confers. **The wisest course is to ask ALL applicants whether they wish to claim disability status or need any special unit features or methods of communication for persons with disabilities.**

To verify that an applicant is a person with a disability, PHA staff can first check to see whether the applicant is under 62 and receives either Social Security or SSI disability income. Receipt of such income is all the verification needed that an individual qualifies as a person with a disability. PHAs may not limit proof of disability to this type of verification. Some applicants will be persons with disabilities even though they do not have such income. Other acceptable methods of verifying disability include (but are not limited to):

- A statement from a physician or other reliable source.
- Telephone contact with a physician or other reliable source, followed by PHA documentation of contact in the applicant file.
- In-person contact with physician or other reliable source, followed by PHA documentation of contact in the applicant file.

PHAs should use the least intrusive method possible, phone calls and personal contact should only be used when absolutely necessary. Often the qualified professional or reliable source will not be a physician.

PHAs may also need to verify whether a person who is requesting a reasonable accommodation meets the Section 504 definition of a person with a disability, and also whether the requested accommodation is necessary to allow the individual to make more effective use of his or her housing. In doing so, PHAs may only ask for information that is actually necessary to verify this information. PHAs are still **not permitted to inquire about the nature or extent of the person's disability, nor is it necessary or permitted for PHA staff to ask about anyone's diagnosis or details of treatment.** If a verification source sends such information, it should not be read or placed in the file, it should be disposed of in a secure manner. **Under no circumstances should a PHA request an applicant or resident's medical record.**

Processing Applications from Persons with Disabilities: It is illegal to reject an applicant because he or she has a disability, or for reasons that could be overcome by the PHA's reasonable accommodation of the applicant's disability. If, even with reasonable accommodation, applicants with disabilities cannot meet essential lease requirements, it is permissible to reject them.

Housing providers must, if requested by the applicant, consider whether any mitigating circumstances could be verified to explain and overcome any problematic behavior related to a previous tenancy. If a reasonable accommodation will allow an applicant with a disability to meet the requirements, a housing provider must make the accommodation.

Such insurmountable problems might arise because of behavior or performance in past housing, inability to comply with the terms of the PHA's lease, or services needs from PHA staff that represents an alteration in the fundamental nature of the PHA's program. There are three possible stages of processing the applications of persons with disabilities.

Eligibility Review

The first stage of processing any application is the determination of program eligibility. Every applicant for housing should be asked whether the applicant or a family member is disabled. Disabled Family status qualifies the member for a special deduction in rent computation and confers a preference in assigning modified and accessible units and in buildings designated for persons with disabilities. Once an applicant has been determined to have a disability, no further reference should be made to that fact unless the application reaches the third stage of processing.

Applying the applicant Selection Criteria

The second stage of processing is applying the screening criteria. An applicant who happens to have a disability but was able to demonstrate a history of meeting financial obligations, caring for a rental unit, avoiding disturbing neighbors and destroying property, avoiding criminal behavior, etc., would be recommended for admission with no further reference to or consideration of the disability.

Mitigating Circumstances and Reasonable Accommodations

The third stage of processing would only occur if an applicant could not meet one or more of the applicant screening criteria. At this point, applicants with disabilities are entitled to considerations to accommodate their disability.

It is recommended that PHA staff hold a second interview with an applicant known to have a disability who cannot meet one or more of the applicant screening criteria. The purpose of this interview is to determine whether it is possible to admit the applicant through consideration of mitigating circumstances or by applying a reasonable accommodation. The following steps can be taken:

- Determine if mitigating circumstances are applicable.
- If the evidence of mitigating circumstances presented by the applicant relates to a change in medical condition or course of treatment, the PHA has a right to refer such information to persons qualified to evaluate the evidenced and verify the mitigating circumstances.
- The PHA also has the right to request further information reasonably needed to verify the facts that directly relate to the mitigating circumstances, if offered by the applicant to justify/document his request, even if such information is of a medically confidential nature
- An applicant with a disability who cannot meet the applicant screening criteria taking into account possible mitigating circumstances, reasonable accommodations by the PHA, or services needed for lease compliance to be provided to the applicant by others, must be rejected.

“Direct Threat to Health or Safety”: PHAs are not required to accommodate a person “whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.” If a PHA wants to deny rental assistance to any applicant or terminate a household for these reasons, the PHA must be able to support the action with recent, credible and objective evidence of the “direct threat.” Without this evidence, the PHA must grant any accommodation request which is determined to be reasonable.

Issues in Public Housing:

Reasonable accommodations apply to:

- Unit size
- Unit location

PHAs must adopt suitable means to ensure that the outreach notice when opening waiting list reaches eligible individuals with disabilities.

PHAs should consider alternate methods to accept applications, e.g. by mail, home visits, via a third party.

Issues in Section 8:

PHAs must adopt suitable means to ensure that the outreach notice when opening waiting list reaches eligible individuals with disabilities.

PHAs are required to encourage owner participation, including owners that have accessible units and encouraging owners to make accessibility modifications.

PHAs should consider alternate methods to accept applications, e.g. by mail, home visits, via a third party.

PHA must provide a current list of available accessible units known to the PHA

A PHA may extend the voucher term to give a person with disabilities additional time to find a suitable unit

PHAs are required to assist persons with disabilities locate a unit when requested

PHAs may approve leasing of a unit from a close relative as a reasonable accommodation

PHAs may approve a higher rent for rent reasonable units with accessible features, as a reasonable accommodation

PHAs may grant an exception payment up to 110% of FMR to help persons with disabilities find an affordable unit and if necessary request exception payments higher than that with HUD approval, as required.

PHAs must permit vouchers to be used in special housing types such as Single Room Occupancy (SRO) units, shared housing units, group homes, congregate housing and assisted living as a reasonable accommodation.

PHAs may grant larger units or utility allowances as a reasonable accommodation.

REVIEW OF HUD GUIDANCE/REGULATIONS

REVIEW OF HUD GUIDANCE/REGULATIONS RELATED TO REASONABLE ACCOMMODATION

PIH Notice 2002-01

I. Statutory/Regulatory Requirements

B. Major Provisions

4. Reasonable Accommodations (24 CFR 8.4 (b) (i), 8.24 and 8.33) When a family member requires an accessible feature(s) or policy modification to accommodate a disability, PHAs must provide such feature(s) or policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden. If providing such feature(s) would result in a financial and administrative burden, the PHA is required to take any other action that would not result in an undue burden. PHAs and other recipients of Federal financial assistance are required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the unit, the common areas of a dwelling or participate in or access other activities conducted/sponsored by the recipient.

For example, a PHA that does not allow residents to have pets must modify its policies and allow a tenant with a disability to have an assistive animal if the animal is needed as a reasonable accommodation. If the recipient provides transportation to functions or activities or if transportation is necessary for a disabled person to participate in such functions or activities, a recipient must ensure that accessible transportation is provided to accommodate persons with disabilities and their aides including the reasonable accompaniment of relative(s) or acquaintance(s). PHAs and other recipients of Federal financial assistance are required to make and pay for structural modification for tenants or applicants with disabilities. For example, a PHA may be required to install a ramp to allow a tenant in a wheelchair access to a dwelling unit or transfer a family to an available accessible unit or one that can be modified without causing an undue financial and administrative burden or alteration in the nature of a program, rather than modifying an existing unit. If providing a requested accommodation would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden, then the PHA need not provide that accommodation. However, the PHA is required to provide any other accommodation that would not result in an undue financial and administrative burden or fundamental alteration of the program. See 24 CFR 8.24 for a variety of compliance methods. (Note: once a PHA has made its programs accessible in compliance with 24 CFR 8.23(b) and 8.25 there is no requirement to make structural changes to existing housing facilities where other methods are effective in achieving compliance.

E. The Fair Housing Act of 1988/24 CFR 100

2. Reasonable Accommodation (24 CFR 100.204) Applies to private owners participating in Housing Choice Voucher programs and PHAs as well as all housing providers that are recipients of Federal financial assistance. PHAs are also covered under Section 504/24 CFR 8.4. This Section states that it is unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford people with disabilities equal opportunity to use and enjoy a dwelling unit, including public and common use areas (see regulation for further requirements and guidance)

II. Program Specific Compliance/Activities

C. Admission/Occupancy

5. Screening/Reasonable Accommodations. Many applicants with disabilities will pass screening, will not need a reasonable accommodation, will not need special features, and will be admitted in exactly the same manner as other applicants. Applicants who fail screening are sent a rejection letter. This letter must provide all applicants information concerning the PHA's informal review process and their right to request a hearing. The letter must also state that applicants with disabilities have the right to request reasonable accommodation if it does not cause the PHA to make a fundamental alteration to the nature of its program. Housing providers must, if requested by the applicant, consider whether any mitigating circumstances could be verified to explain and overcome any problematic behavior related to a previous tenancy. If a reasonable accommodation will allow an applicant with a disability to meet the requirements, a housing provider must make the accommodation.

A reasonable accommodation allows the applicant with a disability to meet essential requirements of tenancy; it does not require reducing or waiving essential requirements. Examples of reasonable accommodations include, but are not limited to, physical alteration of units, making services and programs accessible, and revising policies and procedures. The focus should be on finding a reasonable accommodation that will permit the applicant to comply with the essential obligations of tenancy. A PHA is not required to excuse the applicant from meeting those requirements. All applicants should be provided information about how to request a reasonable accommodation at the time they apply for admission at and every re-certification. Each PHA must have a reasonable accommodation policy. The requirement to provide a reasonable accommodation is present at all times, including during lease enforcement.

How is Disability defined?

An individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities. The term “physical or mental impairment” may include, but is not limited to, conditions such as visual or hearing impairment, mobility impairment, HIV infection, mental retardation, drug addiction (except current illegal use of or addiction to drugs), or mental illness. The term “major life activity” may include seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking or working. Section 504 also protects persons who have a record of such impairment, or are regarded as having such an impairment.

What is a reasonable accommodation under Section 504?

A “reasonable accommodation” is a change, adaptation or modification to a policy, program, service, or workplace which will allow a qualified person with a disability to participate fully in a program, take advantage of a service, or perform a job. Reasonable accommodations may include, for example, those which are necessary in order for the person with a disability to use and enjoy a dwelling, including public and common use spaces. Since persons with disabilities may have special needs due to their disabilities, in some cases, simply treating them exactly the same as others may not ensure that they have an equal opportunity to use and enjoy a dwelling.

In order to show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability. As discussed in the next question, what is reasonable must be determined on a case-by-case basis. However, experience has shown that the following examples are often reasonable accommodations.

A federally assisted housing provider has a policy of not providing assigned parking spaces. A tenant with a mobility impairment, who has difficulty walking, is provided a reasonable accommodation by being given an assigned accessible parking space in front of the entrance to his unit.

A federally assisted housing provider has a policy of requiring tenants to come to the rental office to pay their rent. A tenant with a mental disability, who is afraid to leave her unit, is provided a reasonable accommodation by being allowed to mail her rent payment.

A federally assisted housing provider has a no pets policy. A tenant, who uses a wheelchair and has difficulty picking up items off the ground, is allowed to have an assistive animal that fetches things for her as a reasonable accommodation to her disability.

An older tenant has a stroke and begins to use a wheelchair. Her apartment has steps at the entrance and she needs a ramp to enter the unit. Her federally assisted housing provider pays for the construction of a ramp as a reasonable accommodation to the tenant's disability.

How do you determine whether a request for a certain accommodation is reasonable?

Whether a particular accommodation is "reasonable" depends on a variety of factors and must be decided on a case-by-case basis. The determination of whether a requested accommodation is reasonable depends on the answers to two questions. First, does the request impose an undue financial and administrative burden on the housing provider? Second, would making the accommodation require a fundamental alteration in the nature of the provider's operations? If the answer to either question is yes, the requested accommodation is not reasonable. However, even where a housing provider is not obligated to provide a particular accommodation because the particular accommodation is not reasonable, the provider is still obligated to provide other requested accommodations that do qualify as reasonable. For example:

As a result of a disability, a tenant is unable to open the dumpster provided by his housing provider for his trash. The tenant requests that the housing provider send a maintenance staff person to collect his trash from his apartment daily. Because the housing development is a small, low-budget operation and the maintenance staff are not on site daily, it is an undue financial and administrative burden for the housing provider to provide daily trash service to the tenant and the housing provider may refuse to provide the requested accommodation. However, the housing provider is obligated to provide the tenant with a requested alternative accommodation—providing either an open trash can or placing a trash can which the tenant can open in an accessible location so that the tenant can dispose of his trash.

What happens if providing a requested accommodation involves some costs on the part of the federally assisted housing provider?

Section 504 requires that in making an accommodation, a federally assisted housing provider will be required to bear costs which do not amount to an undue financial and administrative burden. In application, this means that such a housing provider may be required to spend money to provide legally required reasonable accommodations.

When and how should an individual request an accommodation?

An individual with a disability should request an accommodation as soon as it appears that the accommodation is needed. However, requests may be made at any time. For example, requests may be made when an individual is applying for housing, entering into

a lease, or occupying housing. Individuals who become disabled, during their tenancy may request accommodations, even if they were not disabled when they signed their leases.

Section 504 does not prescribe a uniform procedure for requesting a reasonable accommodation to be used with all housing providers. To request an accommodation, an individual need not mention Section 504 or use the phrase “reasonable accommodation.” In general, a tenant or prospective tenant should make clear to the housing provider that s/he is requesting that an exception change, adjustment or modification be made to a rule, policy, practice, service, building or dwelling unit because s/he has a disability. S/he should explain what type of accommodation is requested and explain the relationship between the requested accommodation and his or her disability. In order to facilitate the process and consideration of the request, tenants or prospective tenants may wish to check with a housing provider in advance to determine whether that housing provider has established any specific procedures regarding requests for reasonable accommodation. Although the Section 504 regulations do not require it, it is usually helpful that the request be made in writing, so there will be documentation that the request was actually made in the event of a later dispute.

Must a federally assisted housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. Section 504 does not require that a housing provider adopt a formal procedure that an applicant for housing or a tenant must follow to request a reasonable accommodation. However, having such a procedure will probably aid both the individual in making the request and the housing provider in accessing it and responding to it in a timely fashion.

Is a federally assisted housing provider obligated to provide an accommodation to a tenant or applicant if s/he has not requested it?

No. Such a housing provider is only obligated to provide an accommodation if s/he is on notice of the request. However, a person with a disability will be considered to have asked for an accommodation if s/he indicates that a change or exception to a policy, practice, or procedure or a modification would assist him or her in making more effective use of his or her housing, even if the words “reasonable accommodation” are not used as part of the request.

What happens if a federally assisted housing provider fails to act on a request for an accommodation?

If a housing provider delays responding to a request for an accommodation, after a reasonable amount of time, that delay may be construed as a failure to provide a reasonable accommodation. A tenant or applicant may choose to seek legal assistance or

file a complaint with HUD. (Tenants may also choose to contact the local HUD Office of Public Housing or Office of Fair Housing and Equal Opportunity to request assistance in resolving the request if appropriate.)

When can a federally assisted housing provider insist on an alternative to the accommodation requested by a tenant?

If the housing provider believes that the requested accommodation is unreasonable, the housing provider may, but is not required to, propose a substitute accommodation. In doing so, the housing provider should give primary consideration to the accommodation requested by the tenant or applicant because the individual with a disability is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective. If the housing provider suggests an alternative accommodation, the tenant may reject it if s/he feels it does not meet his or her needs.

**NEW DIRECTIONS PUBLIC AND ASSISTED HOUSING REFORMS FOR THE
21st CENTURY
PHA Staff Conference QHWRA August 20-24-2001**

Conventional Public Housing—Opportunities/Requirements for People with Disabilities

Reasonable Accommodations. When a family member requires an accessible feature(s) or policy modification to accommodate a disability, PHAs must provide such feature(s) or policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden.

Reasonable accommodation also applies to:

Unit Size: In public housing, a family may need a unit that is larger than the occupancy standards because of a family member with a disability. It is unlawful to fail to provide a reasonable accommodation that denies such a family the opportunity to apply for and obtain a larger unit.

Unit location: In public housing, a family applying for a unit or requesting a transfer may need a first floor unit due to a disability

Housing Choice Voucher—Opportunities/Requirements for People with Disabilities

Access for persons with disabilities. The housing choice voucher program includes the following accommodations to improve housing opportunities for persons with disabilities:

Outreach:

- Families: PHAs must adopt suitable means to ensure that the outreach notice when opening or adding names to its waiting list reaches eligible individuals with disabilities.
- Owners: PHAs are required to encourage owner participation, including owners that have accessible units and encourage owners to make accessibility modifications.

Applications and admission:

- To accommodate a person with disabilities, a PHA may accept applications by mail, make home visits, or make arrangements for a closer PHA to take a family's application.
- A PHA may give selection preference to applicants with disabilities, but not for specific disabilities.

Finding a suitable unit:

- In the voucher program, the family receives a voucher and chooses housing that meets the family's needs and desires.
- When issuing a voucher to a family that includes an individual with disabilities, PHAs must include a current list of available accessible units known to the PHA.
- A PHA may extend the voucher term to give a person with disabilities additional time to find a suitable unit in accordance with its Administrative Plan policies.
- HUD may approve a special administrative fee to reimburse a PHA that helps a person with disabilities to find a suitable unit.
- A PHA may approve leasing of a unit from a close relative for a person with disabilities.

Rent and payment standards:

- The PHA may approve a higher rent for rent reasonable units with accessibility features
- A PHA may grant an exception payment standard up to 110 percent of the HUD-published fair market rent (FMR) to help a person with disabilities find and afford a suitable unit.
- A PHA may ask the HUD field office to approve an exception payment standard up to 120 percent of the FRM to help a person with disabilities find and afford a suitable unit

Nondiscrimination requirements for private owners:

- Private owners participating in the Housing Choice Voucher (HCV) program (except those who receive Federal assistance through project-based certificates/vouchers and the moderate rehabilitation program) are not considered to be recipients of Federal funds and are, therefore, not directly covered under section 504/24 CFR 8.
- Owners are, however, covered under the Fair Housing Act and implementing regulations at 24 CFR 100 and, in certain circumstances, Title III of the Americans with Disabilities Act.

Reasonable Accommodation:

- Owners of private rental units leasing with voucher assistance must make reasonable accommodations in rules, policies, practices, or services if necessary for a person with disabilities to use and enjoy the housing.
- PHAs may encourage owners to make accessibility modification, including permitting higher rent to reflect the special modifications.
- Owners of private rental units must permit the family to make reasonable modifications to the dwelling unit or common areas at the tenant's or other's expense, if necessary for a person with disabilities to use the housing.
- PHAs, churches, local governments or local advocacy groups for persons with disabilities may help person with disabilities pay for or obtain needed funding for modifications to their units.

REVISED PUBLIC HOUSING OCCUPANCY GUIDEBOOK

1.2 Affirmative Disability-Related Civil Rights requirements Under Section 504 of the Rehabilitation Act and the fair Housing Act

Section 504 requires that recipients of federal financial assistance operate their program in a manner that ensures that they are readily accessible to and usable by persons with disabilities. This requirement applies not only to ensuring that a PHA's facilities are barrier free so that persons with mobility impairments can actually use the facilities, but also means that housing providers must be prepared to effectively communicate with persons who have visual, speaking, and hearing impairments. Moreover, PHAs must modify policies, rules and procedures in order to accommodate persons with disabilities so that such individuals can make effective use of the housing program. PHAs are not required to make such changes if they would change the nature of their program or are excessively expensive.

1.2.1 Who is a Person with a Disability under Federal Civil Rights Laws

The Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act and their implementing regulations, define an individual or person with a disability in virtually the same language. Section 504's definition of disability (handicap) is found at 24 CFR 8.3, the Fair Housing Act definition is at 24 CFR 100.201, and the ADA definition is found at 28 CFR 35.104. A person with a disability is any person who:

- Has a physical or mental impairment that substantially limits one or more major life activities:
- Has a record of such an impairment; or
- Is regarded as having such impairment.

The definition does not include:

- Any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the public housing programs or activities, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

As used in this definition the phrase "physical or mental impairment" includes:

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems; neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

“Major life activities”: mean functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

“Has a record of such an impairment”: means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

“Is regarded as having an impairment”: is defined as having physical or mental impairment that does not substantially limit one or more major life activities but is treated by a recipient as constituting such a limitation; has none of the impairments defined in this section but is treated by a recipient as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The above definition of disability determines whether an applicant or resident is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this definition of disability is not entitled to a reasonable accommodation under Section 504 and the Fair Housing Act. This is not the operative definition of disability for determining eligibility for Public Housing Programs.

1.2.1.1 Exclusion of Individuals who pose a direct threat to health or safety of others

Federal disability discrimination laws do not cover persons whose tenancy would pose a direct threat to the health or safety of others or whose tenancy would result in substantial physical damage to the property of others. However, neither Section 504 nor the Fair Housing Act allow for exclusion of individuals based upon fear or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (e.g., current conduct, a recent history of overt acts). A housing provider’s good faith belief or speculation that an individual poses a direct threat is not sufficient. The assessment should consider; (1) the nature, duration and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable modifications of rules, policies, practices, procedures, or services that will reduce or eliminate the risk of a direct threat. Consequently, in evaluating a recent

history of overt acts, a provider should take into account whether the individual has received intervening treatment or medication that has reduced or eliminated the risk of a direct threat. In such a situation, the provider may request that the individual document how the circumstances have changed so that he/she no longer poses a direct threat. The housing provider must have reliable, objective evidence that a person with disability poses a direct threat before excluding him or her from the housing on that basis.

1.2.2 Reasonable Accommodations

Federal disability civil rights laws make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than they have on individuals without disabilities, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. An accommodation may also be a structural change to a common area or a dwelling that is needed by a person with a disability.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability. An accommodation will not be considered reasonable if it constitutes a fundamental alteration of the provider’s program, or constitutes an undue financial and administrative burden.

1.2.3.1 Reasonable Accommodations in the Admissions/Occupancy Process

Some applicants with disabilities may need accommodations to enable them to participate in the application and leasing process. For example:

Even though a PHA has a wheelchair accessible rental office, an applicant’s disability prevents him from actually entering the office. In that instance, it may be a reasonable accommodation for the PHA to send staff to a location the applicant can use, including the applicant’s home.

A PHA has a policy of requiring tenants to come to the rental office in person to pay their rent. A prospective tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that once she moves in she is permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The PHA must make an exception to its payment policy to accommodate this tenant.

Other persons with disabilities may need reasonable accommodations in order to actually occupy and enjoy their public housing unit. For example:

A PHA provider has a policy of providing unassigned parking spaces to tenants. A tenant with a mobility impairment, who is substantially limited in her ability to walk, requests that she be provided with an accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit, but those spaces are available to all tenants on a first come first served basis. The PHA must make an exception to its policy of not providing assigned parking spaces to accommodate this tenant.

1.2.4 Civil Rights Requirements Related to Verification/Inquiries About Disability (24 CFR 100.202)

Under the Fair Housing Act, it is unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of a disability of such persons. Housing providers may make the following inquiries, provided these inquiries are made of all applicants, regardless of whether the applicant appears to have a disability or says he or she has a disability.

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal drug abuser or addicted to a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling that is legally available only to persons with a disability or to persons with a particular type of disability. For example, a PHA may inquire whether an applicant has a disability for determining if that person is eligible to live in mixed population (elderly/disabled) housing;
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability. This means that a PHA may ask applicants, if they need units with accessible features.

Housing authorities are required to verify that an applicant qualifies as a person with a disability before permitting them to move to housing designated for persons with disabilities, or granting the \$400 rent deduction, disability expense allowance, or deduction for unreimbursed medical expenses. Applicants and residents cannot be compelled to reveal the fact that they have a disability, however, if they do not, they may not necessarily receive any of the benefits that such status confers. The wisest course is to ask **all** applicants whether they wish to claim disability status or need any special unit features or methods of communication for persons with disabilities. A sample form is included in this document.

To verify that an applicant is a person with a disability, PHA staff can first check to see whether the applicant is under age 62 and receives either Social Security or SSI disability income. Receipt of such income is all the verification needed that an individual qualifies as a person with a disability. On the other hand, some applicants will be persons with disabilities even though they do not have such income. A sample form is included in this document that the PHA can use to document that an applicant or resident meets the HUD eligibility definition of person with a disability. The form should be sent to a qualified professional having knowledge of the person's disability (not necessarily a physician) who can verify the applicant's status.

PHAs may also need to verify whether a person who is requesting a reasonable accommodation meets the Section 504 definition of a person with a disability, and also whether the requested accommodation is necessary to allow the individual to make more effective use of his or her housing. In doing so, PHAs must only ask for information that is actually necessary to verify this information. PHAs are still not permitted to inquire about the nature or extent of the person's disability, nor is it necessary or permitted for PHA staff to ask about anyone's diagnosis or details of treatment. If a verification source sends such information it should not be read or placed in the file, it should be disposed of in a secure manner, such as by shredding. Under no circumstances should a PHA request an applicant or resident's medical records.

Note: It is a violation of Section 504 and the Fair Housing Act for public housing authority to inquire whether an applicant or tenant is capable of "living independently." Courts have consistently held that this is not a legitimate inquiry to make of applicants or tenants in HUD-assisted housing and PHAs should ensure that their screening materials do not include questions related to such an inquiry.

4.10 Applicants with Disabilities

It is illegal to reject an applicant because he or she has a disability, or for reasons that could be overcome by the PHA's reasonable accommodation of the applicant's disability. If, even with reasonable accommodation, applicants with disabilities cannot meet essential lease requirements, it is permissible to reject them.

Such insurmountable problems might arise because of behavior or performance in past housing, inability to comply with the terms of the PHA's lease, or services needed from PHA staff that represents an alteration in the fundamental nature of the PHA's program (24 CFR 100.202). There are three possible stages of processing the applications of persons with disabilities.

Eligibility Review

The first stage of processing the application is the determination of program eligibility. Every applicant should be asked whether the applicant or a family member is disabled.

Disabled Family status qualifies the member for a special deduction in rent computation and confers a preference in assigning modified and accessible units and in buildings designated for persons with disabilities. Once an applicant has been determined to have a disability, no further reference should be made to that fact unless the application reaches the third stage of processing.

Applying the Applicant Section Criteria

The second stage of processing is applying the screening criteria. An applicant who happened to have a disability but was able to demonstrate a history of meeting financial obligations, caring for a rental unit, avoiding disturbing neighbors and destroying property, avoiding criminal behavior, etc., would be recommended for admission with no further reference to or consideration of the disability.

Mitigating Circumstances and Reasonable Accommodations

The third stage of processing would only occur if an applicant could not meet one or more of the applicant screening criteria. At this point, applicants with disabilities are entitled to considerations to accommodate their disability.

It is recommended that PHA staff hold a second interview with an applicant known to have a disability who cannot meet one or more of the applicant screening criteria. The purpose of this interview is to determine whether it is possible to admit the applicant through consideration of mitigating circumstances or by applying a reasonable accommodation. The following steps can be taken:

- Determine if mitigating circumstances are applicable.
- If the evidence of mitigating circumstances presented by the applicant relates to a change in medical condition or course of treatment, the PHA has a right to refer such information to persons qualified to evaluate the evidence and verify the mitigating circumstances.
- The PHA also has the right to request further information reasonably needed to verify the facts that directly relate to the mitigating circumstances, even if such information is of a medically confidential nature. If the applicant refuses to provide or give access to such further information, the PHA should give no further consideration to the mitigating circumstances.

Screening personnel must keep in mind that an applicant with a disability who may, for example, be unable to care for a current apartment alone, may still comply with the lease if he or she can demonstrate that assistance with caring for the unit has been secured. Such assistance could be in the form of a Live-In-Aide, or it could be a friend, family member, or chore service or employee of the applicant. It is not the province of the PHA to make judgments about the best way to provide assistance, but

simply to determine whether the assistance will be available and will enable the applicant to care comply with the lease.

- For applicants with disabilities, the PHA must also consider reasonable accommodations to eliminate barriers to housing the applicant. Reasonable accommodations may take the form of either physical modification(s) made to the unit, building, development or grounds, or policy or procedural changes. An example of a reasonable accommodation might be the approval of an applicant for a larger unit (waiving the unit occupancy standards) to permit occupancy by a live in aide who would in turn assist the applicant with some aspect of lease compliance that the applicant could not otherwise achieve.
- Accommodations, to be considered reasonable, must not cause undue financial or administrative burden or alter the fundamental nature of the PHA's public housing program. If a service is necessary for compliance with the lease, the PHA is not required to provide it to an applicant with a disability if the service is not provided to other tenants. The PHA must consider admitting that applicant if he or she can document that others will provide the service at no cost to the PHA.
- An applicant with a disability who cannot meet the applicant screening criteria taking into account possible mitigating circumstances, reasonable accommodations by the PHA, or services needed for lease compliance to be provided to the applicant by others, must be rejected.

7.6 Limitations on Verifications Related to Disabilities and Medical Information

In general, PHAs are not permitted to inquire about and should not verify detailed information related to the nature or extent of anyone's disability or medical history. The PHA is permitted to require verification of the presence of a disability that meets the Federal definitions before extending the special rights and protections guaranteed to persons with disabilities. Verified receipt of social security or SSI disability payments document the disability of a family member on whose behalf the payments are made, but persons who do not receive such payments may also qualify as persons with disabilities.

The rights and protections to persons with disabilities include providing units with special features or modifying units, buildings or programs to make them accessible, and providing reasonable accommodations in the way the PHA's programs are operated. Applicants or residents with disabilities have the right to withhold the fact that they have a disability, but, in this case, the PHA is not required to extend the protections available to persons with disabilities.

The PHA should inquire of ALL applicants whether a unit with special features or some other accommodation in processing is needed because of a disability.

When a PHA is performing screening, it typically examines the housing histories of applicants for the past three to five years. As a general rule, this is a good practice. The PHA should, however, permit applicants with disabilities who have spent some or all of the past three to five years in medical facilities receiving treatment to provide only third-party verification of the dates (beginning to end) when they were receiving treatment and were not living in housing. The term “medical facilities” means hospitals, clinics or other institutions whose primary purpose is medical or clinical care. The term does not include halfway houses, group homes, transitional living facilities, or assisted living facilities, which are primarily housing facilities that might include a service component.

Persons treated in medical facilities may not be required to document the nature of the condition for which they were being treated, nor may they be required to divulge any other medical information, including the name of the medical treatment facility.

Since medical treatment facilities are not equivalent to housing, there being no rent charged, no responsibility for unit maintenance, no opportunity to engage in criminal conduct, and no lease in effect, the housing provider loses nothing by not being able to verify future lease compliance through medical facilities.

PHA may require an applicant to provide other verification of ability to comply with the essential provisions of the lease, if the applicant verifies only the dates during which the applicant was in a medical facility and the period covered by the medical treatment is recent or of significant duration.

Other verification of ability to comply with the essential provisions of the lease might include proof of financial responsibility (making a regular monthly payment other than rent), some demonstration of ability to care for property or proof of training in how to care for an apartment, verification that the applicant is not engaged in criminal activity, and other documented evidence that the applicant can comply with the housing authority’s lease. A PHA is not required to offer housing to an applicant who is unwilling or unable to provide documentation of ability to comply with the essential obligations of the lease.

Another instance in which verification of information related to a disability would be permitted relates to the PHA’s consideration of mitigating circumstances during screening. Nothing would prohibit the PHA from seeking verification of medical information presented by an applicant with disabilities who would otherwise be unable to comply with the tenant selection criteria. Such medical information is usually offered either to explain mitigating circumstances or in seeking a reasonable accommodation.

For example, if an applicant had a poor rental history but stated that the previous history was caused by a disability that is now being successfully treated, the PHA would be permitted to verify that:

- the applicant did, in fact, have a disability; and

- the former problems were caused by the disability; and
- the present treatment can reasonable be expected to prevent the recurrence of the problems.

The PHA would neither need nor be permitted to ask for the applicant's diagnosis, description of treatment or medication or other information about the nature or extent of the disability.

If an applicant's former housing problems were due to the applicant's resisting or refusing treatment, the PHA would be justified in verifying whether the applicant would be reasonably likely to continue with the current treatment. In this instance, it still would not be necessary for the PHA to obtain medical information beyond verifying the applicant's assertions about the reasons for past problems, the likelihood of continuing treatment and that the treatment will remedy the problem.

People in Recovery: A difficult issue in verification is that raised by applicants whose history suggests that they may be users of illegal drugs, but who are claiming to be in recovery or rehabilitation. No PHA may admit a current user of illegal drugs, both because the law forbids such admissions and because of the potential for attracting drug-related crime. The Fair Housing Act explicitly states that current users of illegal drugs are not a protected class and permits providers to reject such applicants.

At the same time PHAs should not engage in screening that excludes former users of illegal drugs (people in recovery). Former users in recovery whose housing histories reveal no problems that would point to future lease compliance problems are typically admitted to public housing because, very often, screening staff are unaware of the applicants' status as former substance abusers.

The PHA may request information from a drug abuse treatment facility only if the PHA has adopted one of the following policies:

- The PHA submits a request for information to a drug abuse treatment facility for all families before admission to public housing; or
- The PHA submits a request to a drug abuse treatment facility only for those applicant family members:

whose criminal record indicates a prior arrest or conviction for any criminal activity that may be a basis for denial of admission; or

whose prior tenancy records indicate that the proposed household member engaged in the destruction of property, engaged in violent activity against another person, or interfered with the right of peaceful enjoyment of the premises of other residents.

The PHA may require an applicant to document that he or she is in recovery if objective evidence (such as statements of the applicant or landlord, home visit reports, police reports, or claims by the applicant seeking consideration of mitigating circumstances) raises a question about whether the applicant is a current user of illegal drugs. The final report of the Occupancy Task Force suggested that documentation that an applicant is not illegally using a controlled substance could include:

- Verification from a reliable drug treatment counselor or program administrator stating that the applicant is in treatment, complying with the requirements of the treatment program and not currently using a controlled substance;
- Verification from a self help program (e.g. Narcotics Anonymous) stating that the applicant is participating in their program, how long the applicant has been participating and is not currently using a controlled substance (many chapters of Narcotics Anonymous refuse to provide verification.)
- Verification from a probation or parole officer that the applicant has met or is meeting the terms of probation or parole and with respect to illegal use of a controlled substance, since often probation or parole terms include substance abuse testing; or
- A voluntary interview with a substance-abuse screening team made up of local professionals.

If none of these types of verification produce documentation that the applicant is not a current user of illegal drugs when there is significant evidence to suggest that to be the case, the PHA must reject the application.

Alcohol Abuse and Screening: The questions about alcohol abuse and screening are different from those posed by illegal drug use. Alcohol is a legal drug, so simple use or even quiet abuse of alcohol is not grounds for rejecting an applicant unless the use or pattern of abuse of alcohol results in behavior that would interfere with the health, safety or right to peaceful enjoyment of the premises by other residents. An applicant who is an alcoholic must meet the same screening criteria as any other applicant. If an applicant's housing history demonstrates behavior that would be a lease violation, screening staff would have grounds to reject the application, whether or not the behavior were related to the applicant's alcoholism.

On the other hand, if screening revealed past tenancy problems, but the applicant asserted that those problems had been caused by alcohol abuse that was no longer occurring, staff would verify the applicant's assertions. This would entail several steps:

- first, verifying that the negative behavior was, in fact, caused by alcohol abuse;

- next, documenting (using methods similar to those described above for former users of illegal drugs) that the applicant was no longer abusing alcohol; and finally,
- examining the applicant's housing history since entering recovery to ensure that no other screening problems still exist.

The point is that the PHA examines each applicant's behavior, not his or her alcoholism. Some people who abuse alcohol damage their own health but still never engage in behavior that would violate the lease.

14.5 Reasonable Accommodation of Residents with Disabilities

On request from a family that includes a person with disabilities, the PHA must approve a utility allowance that is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 CFR Part 8 to make the program accessible to and usable by the family with a disability. (See 24 CFR 965.508)

Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability.

17.8 Accommodation of Persons with Disabilities

A PHA must provide reasonable accommodations to applicants and tenants with disabilities in every aspect of occupancy, as needed to ensure that every tenant has an equal opportunity to use and occupy the property.

Further, the PHA must notify tenants that they may, at any time during their tenancy, request a reasonable accommodation of a household member with a disability, including a reasonable accommodation to enable the tenant or household member to comply with the lease.

Another way to think of this requirement is to consider whether some reasonable accommodation would make it possible for a tenant with a disability to be lease compliant when issues of lease violations arise. For example, if a visually impaired tenant has difficulty keeping her unit as clean as is needed for health and sanitation, the PHA may discuss the matter with the tenant and then make a referral to a Chore Service, mention the problem to the tenant's designated contact, or contact a social service agency before initiating lease enforcement.

STRATEGIES TO HELP PEOPLE WITH DISABILITIES BE SUCCESSFUL IN THE HOUSING CHOICE VOUCHER PROGRAM

GUIDANCE FOR PUBLIC HOUSING AGENCIES ADMINISTERING HOUSING
CHOICE VOUCHERS TARGETED TO PEOPLE WITH DISABILITIES THROUGH
THE MAINSTREAM, CERTAIN DEVELOPMENTS OR DESIGNATED HOUSING
PROGRAMS April 2002

Chapter 1

Strategies to Increase Utilization of Housing Choice Vouchers by People with Disabilities

Verifying Disability Status

PHAs can verify an applicant's disability status in a number of ways. PHAs may use the receipt of SSI or SSDI as sufficient proof of disability. However, PHAs may not **limit** proof of disability to this type of verification. Other acceptable methods of verifying disability include (but are not limited to):

- A statement from a physician or other reliable source. Reliable sources might include the state Departments of Mental Health, Mental Retardation or Public Health or a local Association for Retarded Citizens (ARC), Mental Health Center or Independent Living Center (CIL).
- Telephone contact with a physician or other reliable source, followed by PHA documentation of contact in the applicant file
- In-person contact with a physician or other reliable source, followed by PHA documentation of contact in the applicant file.

PHAs may not ask whether an applicant with a disability can live independently. The PHA must ensure the application does not include any illegal questions regarding the nature or severity of the disability or ability to live independently.

Housing Search Policies and Reasonable Accommodation

The HCV program regulations require that PHAs provide certain accommodations to persons with disabilities to assist them in addressing these barriers to housing search. These regulations apply to both the targeted vouchers awarded through the Mainstream, Certain Developments and Designated Housing programs, as well as those in the general HCV program.

- PHAs must provide an extension of the initial 60-day housing search term if requested as a reasonable accommodation (24 CFR 982.303(b)(2)).
- PHAs must provide a larger unit size if necessary to accommodate the individual's disability (24 CFR 982.402(b)(7 & 8)). In a related provision, a live-

in aide may reside in the unit as a reasonable accommodation if needed by the person with a disability (24 CFR 982.517).

(Note: PHAs may receive requests for increased unit size for a variety of reasons. For example, a person who uses a significant amount of medical equipment may request an additional bedroom to accommodate the equipment. In addition, people with disabilities may request a larger unit sized to house a needed live-in aide. A single individual that requires medical assistance at night, for example, may request a second bedroom for a live-in aide. Two unrelated individuals with cognitive disabilities who choose to live together may require 24-hour assistance and request a third bedroom to accommodate the live-in aide. With appropriate documentation, PHAs can approve any of these types of requests.)

- PHAs must provide a list of available wheelchair accessible units to individuals who need such units (24 CFR 8.28(a)(3)).
- PHAs and/or HUD may approve an exception payment standard if needed as a reasonable accommodation (24 CFR 982.503(c)(2)(ii)).

(Note: PHAs may receive reasonable accommodation requests for payment standard increases for a variety of reasons. Examples include:

- An individual with a disability may make a request to reside in a certain neighborhood where the units exceed the payment standard because of its proximity to family supports, work, medical supports or other disability-related need.
- Wheelchair accessible units may be harder to come by and/or available primarily in newer buildings and therefore more expensive than the average units.
- If no accessible units can be identified, a participant may ask the owner to make modifications for them and request a higher payment standard to cover the cost as long as the unit meets the PHA's rent reasonableness standard.

(Note: If the PHA's current applicable payment standard is below 110% of the FMR, the PHA may make its own determination about the request and increase the payment standard up to 110% of the FMR on a case-by-case basis. However, if the payment standard is already at or above 110% of the FMR, the PHA should pass exception payment standard requests on to HUD for review. It is important to note that recently HUD has approved exception payment standards over 120% of the FMR as a reasonable accommodation for a person with a disability. HUD Field Offices have the authority to grant requests for exception payment standards between 110 and 120% of the FMR as a reasonable accommodation. HUD

Headquarters has the authority to grant those requests over 120% of the FMR.)

- PHAs must approve a higher utility allowance if requested as a reasonable accommodation (24 CFR 982.517).
- PHAs must approve the leasing of a unit from a relative if needed as a reasonable accommodation (24 CFR 982.306(d)).
 - (Note: There are numerous situations in which a person with a disability may need to lease a unit from a relative as an accommodation. A person with a disability may be receiving supports-such as assistance with shopping, meal preparation or other tasks-from a relative that can be best provided if the individual is living with or near the relative. Alternatively, a person with a disability may have resided in a unit owned by a relative for an extensive period prior to receiving the voucher and may be able to document that a move to another unit would be very difficult for them. A person with a physical disability may be able to rent a unit from a relative if the unit has needed accessibility features.)
- PHAs must permit vouchers to be used in special housing types such as Single Room Occupancy (SRO) units, shared housing, group homes, congregate housing and assisted living (24 CFR 982 Part M Special Housing Types and PIH Notice 2000-41).

(Note: While many people with disabilities prefer to live alone, some people with disabilities still live in shared housing settings. These settings often involve roommates, or housing situations with shared kitchens, common areas, or bathrooms. Sometimes there may be live-in staff. HUD has determined that PHAs must allow vouchers to be used in these settings.

Some PHAs worry about the paperwork associated with special housing types. Using vouchers in these situations and determining the appropriate total tenant payment and subsidy amount can be confusing. However, permitting participants to lease in special housing types can often be beneficial to PHAs since:

People with disabilities in these living situations may already have a voucher;

People with disabilities in these living situations may be interested in leasing in place;

The housing is often of good quality; and

Supports are often already in place for people with disabilities who need and request them.

Conducting outreach to eligible people with disabilities currently living in these special housing types may help the PHA utilize more vouchers.)

- PHAs must provide information on how to complete and file a housing discrimination complaint (24 CFR 982.304).
- HUD has determined (PIH Notice 2000-28) that PHAs are entitled to a one-time “Hard-to-House” fee for assisting people with disabilities to locate housing with a HCV program voucher.

Chapter 2

A Guide to Fair Housing and Reasonable Accommodation in the Housing Choice Voucher Program

Three federal laws protect the housing rights of people with disabilities. These laws rely on the concept of reasonable accommodation as a vehicle for providing nondiscriminatory services to people with disabilities, and they all share the same definition of “disability.”

1. Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973 bars recipients of federal funds from discriminating on the basis of disability. PHAs are covered under this law because they receive funding from HUD. PHAs must follow Section 504 requirements in their HCV program and other housing programs. According to this law, private owners who participate in the HCV program are barred from discriminating on the basis of disability under the contracts they sign with HUD.

2. Fair Housing Amendments Act of 1988.

The Fair Housing Amendments Act applies to public and private housing providers alike-including PHAs. Under the Fair Housing Amendments Act, a housing provider is required to make reasonable accommodations in policies, practices or services, when such accommodations are necessary to afford such a person equal opportunity to use and enjoy a dwelling.

3. Americans with Disabilities Act of 1990.

Title II of the Americans with Disabilities Act (ADA) applies to all services provided by state and local governments. This law applies to PHAs that administer a HCV program.

Title III of the ADA covers public accommodations of all types, including facilities such as PHA rental offices, meeting rooms, childcare centers and educational or vocational training programs. Private housing providers (including HCV owners) who provide such services and facilities, such as laundry rooms, are covered by this law and must make sure that common areas are accessible to tenants with disabilities.

Housing Choice Voucher Program Owner Obligations

It is important to note that all private owners of rental housing, including HCV owners, have specific obligations under the Fair Housing Act. In addition, HCV program regulations specifically require owners to comply with equal opportunity laws. In the Housing Assistance payments contract executed between the owner and the PHA, the owner also agrees not to discriminate on the basis of disability.

HCV owners therefore have very specific obligations to provide reasonable accommodation to HCV participants who are disabled and need such accommodations to use and enjoy their housing. Examples of these types of accommodations might be waiving a “no pet” policy to allow a person with a disability to have an assistive animal or providing rent reminders if a disability causes the tenant to be forgetful.

Reasonable Accommodation

A reasonable accommodation is an action taken by a PHA or other housing provider. It is a change in rules, policies, practices, or services that may be necessary to provide a person with a disability an equal opportunity to obtain housing and to use and enjoy her home. Reasonable accommodations range from providing information in large print to people with sight impairments to allowing a HCV to be used in congregate housing or Group Homes.

There is no list of required reasonable accommodations for PHAs. Each situation creates the opportunity for PHAs and HCV household to identify and eliminate disability-related barriers and to remove them. The provision of reasonable accommodation is a creative process that involves trial and error. Hence a PHA must be prepared to provide a new reasonable accommodation if the first one fails to serve its purpose.

Of course, PHAs are not required to provide “unreasonable” accommodations. An unreasonable accommodation is one that imposes an “undue financial and administrative burden” on the PHA or that would create a “fundamental alteration in its programs or services. An “undue burden” is an excessive financial or administrative burden relative to the resources available to the housing provider. Within this framework, a large PHA would be expected to provide more extensive accommodations than a small PHA with only a handful of HCV program vouchers. For example, a large PHA might be expected to have HCV application materials in Braille while a small PHA might be required to assist a visually impaired person with the application process.

PHAs also don't have to provide accommodations that would significantly change the services they provide, thereby creating a "fundamental alteration" of their program. For example a PHA must provide a larger voucher unit size for a person with a disability with a live-in aide. However, a PHA does not need to help hire the live-in aide for the household. Such a service would be a fundamental alteration to the PHA's program, which is to provide housing.

Finally, PHAs are not required to accommodate a person "whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." If a PHA wants to deny rental assistance to an applicant or terminate a HCV household for these reasons, the PHA must be able to support the action with recent, credible and objective evidence of the "direct threat." Without such evidence, the PHA must grant any accommodation request which is determined to be reasonable.

Reasonable Modification

Reasonable modification policies under the fair housing laws allow people with disabilities to alter their rental housing units to meet their unique needs. Under reasonable modification, an owner participating in the HCV program must allow a person with a disability—at their own expense—to make certain physical modifications to a unit if needed to fully use and enjoy the housing unit. Owners may require that the modifications be completed in a professional manner and be in compliance with all applicable building codes. In addition, owners may require the tenant to restore the unit to its original condition before vacating.

In the HCV program, owners are generally not required to pay for modifications. However, a PHA may approve a higher rent for an owner who is making accessibility modifications to a unit to meet a HCV household's needs. By providing a higher rent, the PHA is helping the owner pay for the cost of the modification. It is important to remember that this unit still must meet a PHA's rent reasonableness standards.

Requesting a Reasonable Accommodation or Modification

Under Section 504, every HCV participant with a disability has the right to request a reasonable accommodation. In addition, PHAs are required to inform HCV households of this right. PHAs should have a clear process for hearing these requests and determining if the accommodation request is reasonable. This process should be documented in a PHA's Administrative Plan.

To request a reasonable accommodation from the PHA, HCV households must disclose their disability status, unless the disability is obvious or the PHA has otherwise learned of the disability. For example, if the PHA staff meets an applicant who is using a wheelchair, the PHA is assumed to be on notice that the person has a mobility impairment and may need assistance identifying accessible units.

A PHA may respond to a reasonable accommodation request by asking for medical documentation of the disability. A letter from a physician or other health care provider that confirms the disability and describes the functional limitations it causes is adequate for this purpose. A PHA may not request access to any medical records or more detailed information about a disability. PHAs are only entitled to enough information to establish that the person has a disability that is covered under the law and that the requested accommodation is related to the disability.

PHAs are not required to grant the exact accommodation requested, so long as the accommodation provided enables the person to fully participate in the HCV program. For example, a PHA must grant an extension of the housing search time if it is needed by a person with a disability to locate suitable housing. However, a PHA is not required to extend the housing search time indefinitely. PHAs may not refuse to provide a reasonable accommodation based on their belief that the accommodation would not be best for the person. PHAs should recognize that in many cases the person with a disability is in the best position to know what he/she needs, and PHAs should strive to provide the accommodation requested if possible.

Sometimes, a person with a disability may not know exactly what accommodation is needed, or may request an accommodation that proves inadequate. The reasonable accommodation process is a mutual search for a solution, and evolves through trial and error. It may take several tries for the HCV household and the PHA to arrive at an accommodation that works. PHAs and HCV households must both engage in this process in good faith.

There is no point at which it is too late to request a reasonable accommodation from a PHA. For example, a person with a disability could request an exception payment standard on the last day of the housing search time. As with PHAs, it is also never too late for person with a disability to request a reasonable accommodation from an owner participating in the HCV program. For example, judges have ruled that an owner who had already begun eviction proceedings violated a tenant's rights by refusing to dismiss the action when he learned that the tenant was disabled and needed a reasonable accommodation to avoid the eviction.

Of course, the best way to avoid last minute requests is to inform all HCV households of their right to request a reasonable accommodation when they first apply for housing assistance, and to train PHA staff to handle such requests. Designating a PHA staff person to handle all reasonable accommodation requests is also helpful. It ensures that HCV households know whom to contact and allows this person to develop expertise in the wide variety of accommodations that are possible.

Housing Choice Voucher Program Guidebook

Chapter 3: Program Plans

3.2 Housing Choice Voucher Program Administrative Plan

The PHA's administrative plan must address the following areas:

Assistance to families that include persons with disabilities: Efforts families may expect the PHA to make on behalf of families with members who need accessible housing or other reasonable accommodations must be described in the administrative plan. HUD requires that the PHA provide such families with information about accessible units on the market and make reasonable accommodations in adjusting the search time and payment standard. The administrative plan must describe any additional efforts the PHA will make to assist the family in locating appropriate housing.

Policies on the use of special housing types: The PHA has the option to approve or not approve a variety of special housing types in its housing choice voucher program. These include homeownership, single room occupancy (SRO) housing, congregate housing, shared housing, group homes, cooperative housing, and space rentals for manufactured housing/mobile homes owned by the family. The administrative plan must identify special housing types that are approved for use in the program. (Note that the PHA must allow the use of special housing types if needed as a reasonable accommodation for families that include a person with disabilities.

Chapter 4: Waiting List and Tenant Selection

4.2 Opening the Waiting List

Fair Housing Requirements

All outreach, advertising and public notices announcing the opening or closing of a waiting list must include efforts to ensure that the information will reach those populations that are considered to be "least likely to apply" for assistance under the housing choice voucher programs. Outreach must also include efforts to reach persons with disabilities. All advertising and outreach literature must include the equal housing opportunity log and non-discrimination in the advertising message.

4.5 Purging/Updating A Waiting List

Fair Housing Requirements

A PHA's decision to withdraw from the waiting list the name of an applicant family that includes a person with disabilities is subject to reasonable accommodation requirements. For example, if an applicant family demonstrates that it failed to respond to a PHA's request for information due to a family member's disability, the PHA must decide

whether to reinstate the family on the waiting list as a reasonable accommodation for the disability.

4.8 Accepting Applications Fair Housing Requirements

PHAs are required to make the application process accessible to elderly and disabled populations. The PHA's application site must be accessible, unless making it accessible would result in an undue financial or administrative burden. If the application site cannot be made accessible, the PHA must offer a reasonable accommodation that provides full access to the application process. If the method chosen does not accommodate the elderly or disabled populations, the PHA must make available an alternative application process for these populations.

Reasonable Accommodation Examples

1. Providing the hearing impaired accessibility through TTD/TTY machines
2. Providing a sign interpreter upon request.
3. Providing materials in Braille or on tape to persons with visual impairments.
4. Conducting home interviews for the elderly or persons with disabilities.

PHAs may use both traditional and non-traditional approaches to taking applications. While the traditional method tends to be in-person at the PHA offices or at a special short-term location, other approaches should be considered. Consider a mail-in application process, making home visits, a lottery or other random selection approach, accepting applications over the internet, printing an application in the local newspaper or developing an innovative approach that addressed local needs.

Some application-taking approaches result in a waiting list that is established based on date and time of application. In these instances, completing the application as early as possible is critical. When the method used is a lottery or other random selection process, the timing of application submission has no bearing on one's position on the waiting list, as long as the application is submitted by the specified deadline. Some approaches limit application taking to a defined period of time; others provide for the receipt of applications on an ongoing basis.

What is important is that the approach chosen accommodates the needs of the interested parties, takes into consideration staff resources and availability, and is an efficient means to achieving leasing goals. Consideration should be given to ways in which the application process can be expedited so as not to inconvenience families, particularly working families.

Chapter 5: Eligibility and Denial of Assistance

5.10 Non-Discrimination and Equal Opportunity Requirements

The PHA is required to make the housing choice voucher program available and accessible to all eligible families and must provide a family with information on how to complete and file a housing discrimination complaint if a family claims illegal discrimination because of race, color, religion, sex, national origin, age, familial status or disability.

The Fair Housing Act amendments ensure that persons with a disability and families with children are not discriminated against.

Private owners of rental units must permit disabled persons, at their own expense, to make reasonable modifications to the premises (both interior unit and common area) if necessary, to obtain full enjoyment of a dwelling. However, permission may be conditioned on the renter agreeing to restore the unit interior to its previous condition. Permission may also be conditioned on provision of a description of work, assurance it will be done in “workmanlike” manner and that necessary building permits will be obtained.

If requested, owners must make reasonable accommodations to rules and policies to give persons with disabilities equal opportunity to enjoy dwelling and/or common areas (e.g., through assigned parking for persons with disabilities, or animals assisting disabled tenants, even if pets are not generally allowed).

Section 504 Requirements

Section 504 of the Rehabilitation Act of 1973 (as amended) prohibits discrimination under any program or activity receiving federal financial assistance solely on the basis of disability. The rule requires those who are considered “recipients” of federal funds to ensure that individuals with disability will receive equal opportunity to participate in programs and services in the most appropriate integrated setting.

PHAs are considered “recipients” for this purpose. Owners under the housing choice voucher program are not considered recipients for this purpose, but must comply with the “reasonable accommodation” provisions of the Fair Housing Act amendment.

Program Accessibility/Eligibility

To ensure that persons with disabilities have an opportunity to participate in the program, Section 504 requires “recipients” to assure that outreach materials and the application process are open to persons with disabilities. For example, the PHA’s application process must be accessible to persons with disabilities, or the PHA must make provisions to take applications from these persons.

To ensure communication accessibility, recipients are required to have TDD or TTY machines (teletypewriter machines used by hearing impaired individuals) or an equally effective communication system. Recipients must pay for the cost of an interpreter for hearing impaired persons upon request, although advance notice may be required, and must provide copies of legal documents and informational materials in Braille or on tape for visually impaired applicants. Recipients are not required to take any actions which would result in a fundamental alteration in the nature of the program or undue financial or administrative burden.

Special Rules for the Housing Choice Voucher Program

The PHA must ensure that outreach efforts reach eligible persons with disabilities and that owners with accessible units are encouraged to participate in the program. In addition, PHAs should help families that include an individual with a disability in locating an available, accessible unit. When considering requests for extensions of the voucher term, a PHA must take into account the special problems associated with locating an accessible unit. When required as a reasonable accommodation for a family that includes a person with disabilities, a PHA may establish a higher payment standard.

Chapter 7: Payment Standards

7.4 Applying the Payment Standards

Higher Payment Standard Amount as a Reasonable Accommodation

Although the housing choice voucher program does not generally allow unit-by-unit exceptions, a PHA may establish a higher payment standard amount within the basic range as a reasonable accommodation for a family with a family member with disabilities.

Establishing A Higher Payment Standard Amount as a Reasonable Accommodation

The Williams family has five children and requires a four-bedroom unit. Mrs. Williams is in a wheelchair and cannot go up stairs.

The family has located a modest 4-bedroom ranch house on the outskirts of Midtown that would meet their needs, but the rent is higher than the Midtown PHA's four-bedroom payment standard. The higher rent would require the Williams to pay more than 40% of their income for rent, so they cannot lease the unit without a higher payment standard.

The Midtown Housing Authority (MHA) can provide the Williams with an exception payment standard to enable the family to lease the unit if MHA determines the rent to be reasonable.

Chapter 8: Housing Search and Leasing

8.2 Briefings

Contents of Briefing Packet

Notice stating that, if the family includes a person with disabilities, the family may request a current listing of potentially available accessible units known to the PHA. The notice must also inform the family that it may request an exception payment standard when needed as a reasonable accommodation.

8.5 Search Times

Extensions of Search Time

The PHA has the authority to grant extensions of search time and to determine the length of an extension and the circumstances under which extensions will be granted. If the PHA grants an extension, it must provide written notice to the family. There is no limit on the number of extensions that the PHA can approve. Discretionary policies related to extension and expiration of search time must be described in the PHA's administrative plan.

PHAs must approve an additional search term if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose.

8.7 Request for Tenancy Approval

Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the family must request tenancy approval from the PHA. The family must submit two documents to the PHA: a request for tenancy approval and an unexecuted copy of the lease, including the HUD-prescribed tenancy addendum. The family must submit both documents no later than the expiration date stated on the voucher.

.....Owners must also certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

Chapter 9: Rent Reasonableness

9.5 Making and Documenting the Rent Reasonableness Determination

Value of Accessibility

For the family that requires an accessible unit, the accessible features may justify a higher rent. For such families, the rent reasonableness determination must take those features into account. In a community where there are few such units, the PHA may be justified in allowing a higher rent.

Chapter 15: Terminations of Assistance and HAP Contracts

15.4 PHA Termination of Assistance for Family

Prior to terminating assistance, however, the PHA must give the family the opportunity to request a hearing. In making termination decisions due to family action or failure to act, the PHA has the discretion to consider the seriousness of the issue, the level of involvement of family members, mitigating circumstances related to the disability of family member, and the effects of termination on non-involved family members.

In appropriate cases, the PHA may permit some members of the family to continue receiving assistance while imposing a condition that the family member or members who engaged in wrongful activity will not reside with the assisted family. If the family includes a person with disabilities, the PHA decision is subject to consideration of reasonable accommodations.

Chapter 17: Special Housing Types

17.1 Chapter Overview

With the exception of manufactured homes, which the PHA must allow families to lease under the program, the PHA must decide whether or not to approve the use of special housing types. The PHA's decision should be based on its assessment of the difficulties encountered by households currently looking for housing, applicant and participant demographics suggesting a need for specialized housing, and the availability of suitable housing in the various types in the local market. However, even though a PHA may decide to disallow the use of special housing types, the PHA must allow the use of a special housing type if needed as a reasonable accommodation for persons with disabilities.

17.3 Congregate Housing Occupancy

Elderly persons or persons with disabilities may live in congregate facilities. With PHA approval a live-in aide may live in the congregate unit with a person with disabilities or an elderly person. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities.

17.5 Shared Housing Occupancy

An assisted family may share a unit with other persons assisted under the housing choice voucher program, or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family. If

approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities.

Chapter 18: Allowances for Utilities and Other Services

18.5 Using A Higher Utility Allowance as a Reasonable Accommodation

Housing choice voucher program regulations require a PHA to approve a utility allowance amount higher than the applicable amount on its utility allowance schedule if a higher allowance is needed as a reasonable accommodation to make the program accessible to and usable by a family member with a disability. The family must request the higher allowance, and should provide the PHA with sufficient information to determine the amount of additional allowance required. For example, if it determined that a family member had a disability that required such accommodation, the PHA would be required to approve a family's request for an allowance for air conditioning in a locality where the majority of rental units do not have air conditioning.

Judge David L. Bazelon Center for Mental Health Law
Fair Housing Information Sheet #5
Disability Discrimination in the Housing Application and Screening Process

What questions may a potential landlord ask during the application process?

When screening applicants for housing, landlords may not ask potential tenants if they have a disability or for any information that relates to a disability. For example, it is illegal for a landlord to ask if an applicant is capable of independent living.

A landlord may only ask questions pertaining to one's disability under two circumstances:

1. If a potential tenant is applying for housing specifically for people with disabilities, a landlord may ask if she qualifies for such a unit, and
2. If a potential tenant is requesting a reasonable accommodation to modify a rule, policy or practice based on her disability, a landlord may request verification of her need for the requested accommodation.

Landlords may not single out people with disabilities, even for routine questions concerning eligibility for housing. For instance, during the application process a landlord may ask for financial information and references, but must do so for all applicants. Similarly, the following questions are permissible if addressed to all applicants:

Will you be able to comply with the rules of tenancy?

Will your tenancy pose a direct threat to the health or safety of others?

Will you cause damage to others' property?

Do you have a criminal history?

Are you currently using drugs or have you ever been convicted of the illegal manufacture or distribution of a controlled substance?

Even if a landlord extends an offer of tenancy to an individual, s/he may have violated the FHAA by asking illegal questions pertaining to one's disability during the screening process.